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82076

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23685 7590 07/06/2009  
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EXAMINER

BOUCHELLE, LAURA A

ART UNIT

PAPER NUMBER

3763

MAIL DATE

DELIVERY MODE

07/06/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



**DETAILED ACTION**

***Response to Amendment***

***Claim Rejections - 35 USC § 102***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1-3, 8-12, 15, 19-22, 30, 31, 41-43 are rejected under 35 U.S.C. 102(b) as being anticipated by Rogers et al (US 6416496). Rogers discloses a delivery apparatus comprising a tube (tube exit), a device for monitoring the administration of fluids, a casing 150, an electronic circuit mounted within the casing, and a metering device (col. 13-14). The device includes a timer (Col. 14, lines 38-30). The casing comprises a lower housing and an upper housing pivotally connected by a hinge (col. 13, lines 22-23). The device includes an externally visible display 178 with an input 194 (Col. 14, lines 5-10).

3. Rogers does not disclose that the device is specifically for the administration of enteral nutrition. Since the instant claim is drawn to an apparatus and not a method, the limitation regarding the use of the device with a feeding tube is interpreted to be an intended use recitation. Enteral feeding tube is interpreted to mean a tube used to deliver fluid through an enteral route of administration which may include orally, through a nasogastric feeding tube, or rectally, for example. Therefore, the tube of Rogers is capable of delivering any type of fluid to a patient orally or through the nose and into the stomach. Applicant has failed to positively recite any structural features that would differentiate the claimed invention from any type of delivery tube that could be used to deliver fluids orally.

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***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 13, 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rogers. Claims 13, 35 differ from Rogers in calling for the tube connector to be an outwardly projecting barb. Rogers is silent as to the tube connector. However, it is well known in the art to use a barbed connector to connect a tube to an upstream device because it is secure and releasable. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Rogers to include a barbed tube connector.

***Allowable Subject Matter***

6. Claims 4-7, 14, 23-29, 32, 33, 35-40, 44 are allowed.

7. Claims 16-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8.

***Response to Arguments***

9. Applicant's arguments filed 3/6/09 have been fully considered but they are not persuasive. Applicant argues that the recitation of an enteral feeding tube for monitoring the administration of enteral nutrition fluids is not taught by Rogers. The examiner still believes that this is an intended use limitation for the reasons stated above, namely that the delivery of enteral nutrition may be achieved orally and therefore an enteral feeding tube does not require any additional structural features that are not disclosed by Rogers. An intravenous tube as disclosed

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by Rogers is nothing more than a thin tubular member capable of delivering any type of fluid and may be identical in structure to a nasogastric tube. The device of Rogers is capable of monitoring the delivery of whatever fluid is contained in the reservoir, whether it is a drug to be infused or an enteral nutrition fluid. The type of fluid does not have an effect on the functioning of the device.

### ***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LAURA A. BOUCHELLE whose telephone number is (571)272-2125. The examiner can normally be reached on Monday-Friday 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 517-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Laura A Bouchelle  
Examiner  
Art Unit 3763

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